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SENATE

REPORT
101-482

CIVIL VOIR DIRE DEMONSTRATION ACT OF 1990

OCTOBER 1 (legislative day, SEPTEMBER 10), 1990.—Ordered to be printed

Mr. BIDEN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 592]

The Committee on the Judiciary, having considered S. 592 to establish a demonstration program to study the effect of limited attorney-conducted voir dire, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Civil Voir Dire Demonstration Act of 1990".

SEC. 2. CIVIL VOIR DIRE DEMONSTRATION.

(a) IN GENERAL.—During the 4 year period beginning on January 1, 1991, the Judicial Conference of the United States shall conduct a demonstration program in accordance with subsection (b).

(b) PROGRAM.—(1) The Director of the Administrative Office of United States Courts shall select 4 United States district courts to serve as demonstration districts. No State shall have more than one demonstration district.

(2) Each demonstration district shall adopt and follow a local rule as provided in subsection (c).

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(c) Notwithstanding rule 47(a) of the Federal Rules of Civil Procedure the demonstration district shall adopt the following local rule:

"EXAMINATION OF JURORS.—Except upon an affirmative finding by the court that the interests of justice require otherwise, upon the request of the plaintiff or defendant, the court shall permit the plaintiff and defendant or their attorneys each a minimum of 30 minutes to conduct an oral examination of the prospective jury. Additional time for examination by the attorneys may be provided at the court's discretion and the court may, in addition to such examination, conduct its own examination. The court shall have the authority to impose reasonable limtiations with respect to the questions allowed during such voir dire examination. In a case in which there are multiple parties, each side shall have an additional 10 minutes for each additional defendant, except that the total time required to be allowed shall not exceed 1 hour per side."

(d) Decisions made by a court under subsection (c) shall not be reviewable except for an abuse of discretion.

SEC. 3. STUDY OF RESULTS.

The Judicial Conference of the United States, in consultation with the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall study the experience of the district courts under the demonstration program authorized by this Act.

SEC. 4. REPORT.

Not later than June 1, 1995, the Judicial Conference of the United States shall transmit to the Committees on the Judiciary of the Senate and House of Representatives, a report of the results of the demonstration program authorized by this Act.

I. PURPOSE

The purpose of this bill is to establish a demonstration program on the use of attorney-conducted voir dire in Federal civil trials. This demonstration program is designed to collect information and study the effects of attorneys having a limited right to conduct voir dire in civil cases. This limited right is not currently available in civil cases in the Federal courts, and this bill is designed to answer a number of questions about the appropriateness of such a right. For these reasons, this legislation needs to be adopted in order to conduct this study.

II. LEGISLATIVE HISTORY

Earlier versions of this bill were introduced during the 99th and 100th sessions of Congress. Hearings were previously held on similar versions of this legislation in earlier sessions.

On March 15, 1989, Senator Heflin joined by Senators Bumpers, Pryor, Shelby, and DeConcini, introduced S. 592.

On March 1, 1990, the Subcommittee on Courts and Administrative Practice reported the bill, with amendments, to the full Judiciary Committee.

The Judiciary Committee considered an amendment in the nature of a substitute on August 2, 1990. The committee agreed to the amendment and by voice vote ordered the bill favorably reported.

III. DISCUSSION

This legislation is a result of substantial work and compromise to craft legislation dealing with the issue of attorney-conducted voir dire. As previously introduced, this bill provided for a substantial reform in the methodology of selecting jurors in Federal civil trials. The bill previously provided for legislatively amending the Federal Rules of Civil Procedure. In testimony previously received by the

subcommittee, and in discussion of this bill during this session of Congress, substantial concerns were raised regarding the systemic impact of this legislation. In order to learn about the direct impact of this bill in Federal courts rather than permanently establishing sweeping reforms, a compromise was struck to balance these interests. Therefore, this bill and its companion legislation, S. 591, have been substantially modified since introduction to reflect a balancing of interests.

Proponents of the original legislation believe that adoption of such system would aid in achieving a more meaningful voir dire examination of jurors. Due to the substantial workloads on the Federal bench, judges are often not in the best position to know the intimate details involved in a case before them. Frequently, only the trial attorneys are in a position of fully knowing the significant issues involved in a particular case. Current Federal Rules of Civil Procedure provide that a trial judge may allow attorneys to participate in the voir dire process, but this is not mandated under the Federal Civil rules. Fed. R. Civ. P. 47(a). Instead of a systemic change to the Federal rules, this legislation requires selected Federal districts to give attorneys a time-limited opportunity to conduct voir dire on prospective jurors.

The Supreme Court has noted the importance of the voir dire process. See *Rosales-Lopez* v. *United States*, 452 U.S. 182, 188 (1981). The voir dire system is a fundamental method for protecting the integrity of the jury system. Given these facts, if the voir dire process can be improved to provide greater protections that assure the fairness of jurors, then efforts to change the system should be enacted.

A number of concerns were raised regarding the possible effects of the original legislation. Some persons have argued that allowing attorneys to conduct voir dire may unnecessarily increase trial time. This argument is open to some degree of speculation, and the results of the study of the pilot districts should give some indication regarding this concern. Another issue which has been raised is that attorneys will use their voir dire opportunities to prejudice jurors and to ask unfair or abusive questions. Although this legislation is meant to give attorneys the right to conduct voir dire, that right is not meant to be unfettered. It is expected that the judge will still have complete control over the attorneys during their voir dire, and that such attorneys are still subject to the contempt authority of the court. Given these substantial concerns, a limited test of the right to attorney conducted voir dire in Federal court appeared to be a satisfactory method to learn important lessons about the practicality of this reform.

This legislation is not meant to be a radical change from the voir dire system which is currently in place in Federal courts. This legislation generally allows for 30 minutes of participation by each party during the conduct of voir dire. This bill also allows for judges, in their discretion and upon an affirmative finding that the interests of justice require otherwise, to make a determination that this right may not be exercised in a specific case. This is not a right which should be broadly used, but is narrow in scope and limited to extraordinary trials where the judge finds that the interests

of justice substantially outweigh this important and legislatively mandated right to attorney participation.

This legislation envisions that the judge will and should be in complete control of the courtroom and the examination process. This legislation explicitly provides that the court has the authority to impose reasonable limitations upon the types of questions allowed during the voir dire examination. This legislation is not meant to shackle the ability of the judge to control his or her courtroom, but rather to increase the effectiveness and perception of fairness by allowing attorney participation in the vior dire process.

A final observation that notes the importance of the compromise which has been reached is the views of the Judicial Conference of the United States. The Judicial Conference is the body of Federal judges who provide for the management of the Federal judiciary. This organization of judges, acting through the Administrative Office of United States Courts, has vigorously opposed the broader legislation which has been previously introduced. This objection, however, has ended and the Judicial Conference no longer is opposing the currently crafted bill. Further, the Director of the Administrative Office has noted the flexibility of the committee which has been taken into account with the current legislation, and has noted that the Administrative Office is looking forward to working toward the implementation of this bill.

In conclusion, the committee believes that the proposed legislation to study the effects of attorney-conducted voir dire is a thoughtful and reasonable compromise which should provide important insights into the voir dire process.

IV. VOTE OF THE COMMITTEE

On August 2, 1990, the Committee on the Judiciary, with a quorum being present, approved an amendment in the nature of a substitute offered by Senator Heflin and, by voice vote, ordered the bill, S. 592, favorably reported.

V. SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 of the bill provides that the short title of the bill to be the "Civil Voir Dire Demonstration Act of 1990."

Section 2

Section 2 of the bill establishes the outlines for the establishment of the demonstration program.

Subsection (a) requires the Judicial Conference to establish a 4-year demonstration program.

Subsection (b) provides for the director of the Administrative Office of United States Courts to select four demonstration districts in which this program is to be carried out, and also provides that no state shall have more than one demonstration district. In selecting the appropriate demonstration districts the Director should keep in mind the need for broad-based information gathering. In selecting the demonstration districts the director should keep in mind a number of factors including: a rural/urban balance, geo-

graphic diversity, and the methodology for conducting voir dire in a specific State in order to balance between States which generally allow attorney-conducted voir dire and those which do not follow this practice.

This subsection also requires the demonstration districts to adopt the local rule provided for in subsection (c).

Subsection (c) provides that notwithstanding rule 47(a) of the federal rules of Civil Procedure, the selected demonstration district must adopt the stated local rule regarding attorney participation in the voir dire of jurors. This rule is designed to establish a general practice for the examination of jurors. The local rule does provide a mechanism by which the judge can make an affirmative finding that the interests of justice require that this local rule not be followed in a specific case. The committee perceives this mechanism as extraordinary, and by no means should it be the common practice of any court in a demonstration district. This subsection places firm time limits on the amount of time which must be allowed each party, and specifically delineates the authority of the court to impose limitations on the questions allowed during a jury voir dire.

Subsection (d) provides that decisions made by the court under subsection (c) are only reviewable for an abuse of discretion. In interpreting this section, wide latitude should be given to a judge who acts within the spirit of this rule, but that discretion is not unfettered discretion to interfere unjustly with the functions of this rule.

Section 3

Section 3 requires the Judicial Conference to conduct a study of the experience of the district courts under the demonstration programs. Given the prior institutional objections of the Judicial Conference to the broad-based program envisioned by the bill as introduced, it will be critical that this study be conducted in a careful and thoughtful manner so as to remove any suggestions of bias. Further, the committee suggests that this study be broad in scope and include the reactions of the local bar and litigants, as well as the Federal judges who participate in this demonstration program.

Section 4

Section 4 of the bill provides for the transmission to Congress of the report prepared by the Judicial Conference.

VI. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 24, 1990.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 592, the Civil Voir Dire Demonstration Act of 1990, as ordered reported by the Senate Committee on the Judiciary, August 2, 1990. CBO estimated that enactment of the bill would result in additional costs to the federal government of $250,000 to

$500,000 over the fiscal years 1991–1995, assuming appropriation of the necessary amounts.

S. 592 would require that the Judicial Conference of the United States conduct a four-year demonstration program permitting oral examination of prospective jurors by the parties involved. The program, which would involve civil cases in four district courts, would permit the plaintiff and defendant or their attorneys to conduct an oral examination of a prospective jury upon the request of the plaintiff or defendant. The court would have discretion, in the interests of justice, to deny such a request. (Currently the courts may permit the parties involved to conduct the examination of perspective jurors, but this does not occur in the majority of cases.) The bill also would require that the Judicial Conference prepare a report on the results of the demonstration program.

S. 592 would probably result in slightly longer trials in the four districts selected for the program. We estimate that the bill would apply to about 200 cases a year and cost the Judiciary an average of $50,000–$100,000 annual over the 1991–1995 period.

No costs would be incurred by state or local governments as a results of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mitchell Rosenfeld, who can be reached at 226–2860.

Sincerely,

ROBERT F. HALE
(For Robert D. Reischauer, Director).

VII. REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of trule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that this act will not have direct regulatory impact.

VIII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the committee states that the bill as reported would make no change to existing law.

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